

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROGER STOLICKER, d/b/a STOLICKER  
DAIRY FARMS,

UNPUBLISHED  
October 24, 2006

Plaintiff-Appellant,

v

HAYDEN STONE AGENCY, INC., d/b/a STONE  
INSURANCE AGENCY,

No. 269355  
Sanilac Circuit Court  
LC No. 05-030342-CK

Defendant-Appellee.

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Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff Roger Stolicker appeals as of right from the trial court's order granting defendant Hayden Stone Agency, Inc. (Stone Agency) summary disposition. We affirm. We decide this appeal without oral argument.<sup>1</sup> This case arises from Stolicker's claim that Stone Agency, through its insurance agent, negligently failed to obtain appropriate insurance coverage for Stolicker's barn.

I. Basic Facts And Procedural History

In 1997, Stolicker leased farmland to Daniel Williamson. The lease agreement<sup>2</sup> between them stated, in pertinent part, as follows:

[Williamson] shall pay [his] pro rata share of all casualty, property, and fire insurance for the Leased premises held by a responsible insurance company in an amount as determined by [Stolicker]. [Williamson] shall procure, at [his] own expense, with insurers satisfactory to [Stolicker] . . . One Hundred Thousand (\$100,000.00) Dollars for property damages resulting from any one occurrence. [Williamson] shall keep such insurance in force during the term hereof, and shall deliver the policies to [Stolicker]. Upon failure to [sic] [Williamson] to do so,

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<sup>1</sup> MCR 7.214(E).

<sup>2</sup> The 1997 lease was renewed in 2002, but the pertinent clause remained the same.

[Stolicker] may (but without any obligation therefor), obtain such insurance and charge the cost thereof to [Williamson] as additional rental.

From the beginning of the lease, Stolicker maintained insurance on the building in question, referred to as barn number two, for \$20,000, through Hastings Mutual Insurance Company (Hastings). He purchased the policy through Stone Agency. In May 2002, Hastings notified Stolicker that it was cancelling his insurance coverage, effective June 22, 2002, due to excessive claims. Stolicker then requested that Williamson provide insurance on barn number two. Stolicker also took a copy of the lease agreement to Stone Agency's office and explained to Stone Agency agent, Dale Stone, that Williamson was supposed to maintain insurance for the building. Stone indicated that he would talk to Williamson about obtaining the coverage.

Williamson did not ask anyone at Stone Agency to change the amount of coverage previously carried by Stolicker because he understood that Stone Agency was supposed to transfer Stolicker's then-existing coverage to his policy. Williamson began carrying insurance on barn number two, effective June 11, 2002, in the amount of \$20,000. Stolicker was added to Williamson's policy as a loss payee. Hastings' underwriter sent Stolicker two sets of declaration pages, the first dated June 27, 2002, and the second dated February 28, 2003. Both pages showed Stolicker's interest as loss payee and identified coverage on barn number two with a limit of \$20,000. Stolicker admitted that he never asked Williamson or Stone Agency how much coverage was held on barn number two. Stolicker testified that he did not learn of the \$20,000 coverage on barn number two until after it collapsed in April 2004.

Stolicker filed this lawsuit claiming that Stone Agency negligently underinsured barn number two, which should have been insured for \$100,000 according to the terms of the lease agreement. Stone Agency moved for summary disposition, arguing that the conversation between Stolicker and Stone regarding Stone talking to Williamson about obtaining coverage did not create a duty on the part of Stone Agency. Stone Agency also argued that an insurance agency cannot dictate required amounts of coverage to a customer, and Stolicker could not sit by idly and do nothing for over 13 months without telling the agency of a mistake in the policy. Stolicker argued that he relied on Stone Agency to provide coverage according to the lease terms or to tell him if there was a problem with obtaining such coverage.

The trial court determined that Stone did not make a commitment to insure barn number two for \$100,000; rather, he simply made a commitment to talk to Williamson. The trial court also stated that Stolicker had an obligation to complain about the amount of coverage after he received the two sets of declaration pages notifying him of the \$20,000 coverage limit. Accordingly, the trial court granted summary disposition in favor of Stone Agency.

## II. Summary Disposition

### A. Standard Of Review

Stolicker argues that Stone Agency had an affirmative duty to advise him about the adequacy of insurance coverage on barn number two because the requested amount of coverage was ambiguous and because Stone Agency assumed an additional duty by promising to talk to Williamson about obtaining coverage. We review a trial court's decision to grant a motion for

summary disposition de novo.<sup>3</sup> Whether a duty exists is a question of law that we also decide de novo.<sup>4</sup>

## B. Agent's Duty

A plaintiff must prove four elements in a negligence action: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.<sup>5</sup> The duty of an insurance agent is strictly limited to presenting clients with available insurance products and then assisting the clients with the purchase of the form of coverage desired.<sup>6</sup> Generally, insurance agents do not owe an affirmative duty to advise or counsel an insured about the adequacy or availability of coverage.<sup>7</sup> This general rule is consistent with an insured's obligations to advise the agent regarding the type of coverage desired, provide correct information, read the policy and declarations, and timely raise any objections.<sup>8</sup> There are, however, four exceptions to the general rule:

(1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured.<sup>[9]</sup>

Stolicker argues that the second and fourth exceptions apply here.

### (1) Ambiguous Request Requiring Clarification

According to Stolicker, the second exception applies here because the lease required \$100,000 in coverage, yet the amount transferred to Williamson's policy was only \$20,000. However, none of Stolicker's evidence demonstrates that he specifically asked Stone Agency to provide coverage according to the terms of the lease. Stolicker merely stated that he took a copy of the lease to Stone Agency and showed Stone Agency that Williamson was supposed to provide insurance coverage for the building. Therefore, Stolicker's request was simply for Williamson to carry insurance on the buildings. Nothing was specifically stated between the parties that Williamson was to carry \$100,000 insurance coverage on each building. Stone

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<sup>3</sup> *Harts v Farmers Ins Exch*, 461 Mich 1, 5; 597 NW2d 47 (1999).

<sup>4</sup> *Harts, supra* at 6; *Livonia Hotel, LLC v Livonia*, 259 Mich App 116, 123; 673 NW2d 763 (2003).

<sup>5</sup> *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

<sup>6</sup> *Harts, supra* at 8.

<sup>7</sup> *Id.* at 7, 8; *Pressey Enterprises, Inc v Barnett-France Ins Agency*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2006).

<sup>8</sup> *Harts, supra* at 8 n 4.

<sup>9</sup> *Id.* at 10-11; *Pressey Enterprises, Inc, supra*.

Agency fulfilled its duty to Stolicker by complying with his request that Williamson assume responsibility for coverage on the building.

Even to the extent that the requested amount of coverage was ambiguous, insureds are obligated to read their insurance policies.<sup>10</sup> In this case, Stolicker, as the loss payee, was obligated to read the two separate declaration pages that he received. Those documents unambiguously showed that barn number two was insured for only \$20,000. Stolicker then had an obligation to raise any questions about the coverage within a reasonable time after the policy was issued.<sup>11</sup> An insured may not simply assume that the insurer has in fact provided a certain amount or type of coverage. “It was his business to know what his contract of insurance was[.]”<sup>12</sup>

## (2) Assumption Of Additional Duty

Stolicker also contends that the fourth exception to the general rule applies because he gave a copy of the lease to Stone Agency, and Stone stated he would talk to Williamson. In fact, Stone did talk to Williamson and ultimately provided insurance coverage for barn number two. There is no evidence suggesting that Stone agreed or promised to make sure Williamson carried the coverage as specified in the lease. Therefore, we conclude that the trial court correctly determined that Stone did not make a commitment to insure barn number two for \$100,000, but rather he made a commitment to talk to the lessee, which he did. There is no genuine issue of material fact that Stone Agency or its agent made any affirmative misrepresentation that established a special relationship or created a duty to advise.

Affirmed.

/s/ William C. Whitbeck  
/s/ Henry William Saad  
/s/ Bill Schuette

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<sup>10</sup> *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 726; 706 NW2d 426 (2005).

<sup>11</sup> *VanDyke v League Gen Ins Co*, 184 Mich App 271, 275; 457 NW2d 141 (1990).

<sup>12</sup> *Cleaver v Traders’ Ins Co*, 65 Mich 527, 532; 32 NW 660 (1887).